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1 training to employers externally?

2 A I've provided training for companies who have these

3 packaged presentations that they move around the country,

4 wage and hour law, taxes, various subjects of that sort.

5 And they have -- they have a canned presentation that

6 they've generally put together with the assistance of

7 counsel and consultants dealing with federal law. And

8 they're -- they're oftentimes looking for someone local to

9 provide the state overlay. And I've provided a number of

10 lectures over the years for various companies like that.

11 Q Okay, so this would be where a corporation would contact

12 you to provide expertise on wage and hour laws with

13 particular reference to Alaska State law?

14 A Yes.

15 Q Are there other external programs that you're involved in

16 provided education and training for employers?

17 A We respond to inquiries from employer groups, content

18 groups, various types of management groups, Rotary, any

19 other group of individuals who has an interest in finding

20 out something about some aspect of wage and hour law may

21 contact our office and ask for a presenter.

22 Q Are you also involved in participating in some of the

23 local CLE programs on wage and hour issues?

24 A Yes, I have. There's a couple that come up on a scheduled

25 basis that I present at, one dealing with nonprofit groups

1 couldn't answer?

2 A That I couldn't answer. I think that there are members of

3 my staff who are probably as competent as I in dealing

4 with most questions, and it's possible that some of them

5 have dealt with unique situations in their regions that I

6 may not have become aware of, but I don't think that that

7 likelihood is too great. So in terms of your question I

8 think that I'm probably as competent as anyone else in the

9 Department with regard to wage and hour -- State wage and

10 hour issues.

11 MR. YOUNGMUN: Nothing further.

12 BY MR. COVELL:

13 Q In regard to the last question Mr. Youngmun -- set of

14 questions -- was asking about you being an expert and

15 giving the official State position as to whether

16 something's exempt or nonexempt, does that answer apply

17 both to written and oral opinions?

18 MR. YOUNGMUN: Object, vague....

19 Q Okay, does that apply to....

20 MR. YOUNGMUN: ...ambiguous, calls for speculation.

21 MR. COVELL: I'll rephrase the question.

22 Q Does that answer apply to oral opinions?

23 A I would have to say yes. And I can elaborate, if you'd

24 like.

25 Q Sure, go ahead.

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1 that given biannually. It's been quite a while since I've

2 done any other CLEs, but occasionally there will be some

3 on that subject that I've been asked to present.

4 Q Would it be fair to say that you're regarded as the expert

5 on wage and hour issues in Alaska?

6 A Now how can I make this read in the transcript without

7 tooting my own horn?

8 MR. COVELL: I've got to object to the question as to

9 whether or not that's overall expert or within wage and hour

10 employees or attorneys or....

11 Q Well, you would agree that....

12 MR. COVELL: ...what field.

13 Qthat when people call you as the chief of labor

14 standards, based on your education and your experience and

15 your skills and your knowledge of the laws, that they

16 would count on what you would tell them, wouldn't you

17 agree with that?

18 A I can't -- I can't speak for everyone who calls me, but I

19 would agree with your representation that people generally

20 come to me for what they consider to be the official State

21 position.

22 Q And so if -- let me ask you this, and maybe there isn't

23 anybody else, but if you didn't know the answer to a

24 question is there anybody else at the Department of Labor

25 that somebody could go to answer a question that you

1 A The vast majority of inquiries I receive are from counsel

2 who have a client with a wage and hour issue, maybe not a

3 problem but something that they want to make sure they're

4 doing correct as far as the State Department of Labor

5 goes. And they will come to me to see if what they -- how

6 they perceive the law is the way the Department perceives

7 the law. And sometimes they'll go back to their client

8 with the information and sometimes they will ask for --

9 or, reduce it to writing and send it in and ask me to

10 respond in writing. But not always. With counsel very

11 frequently they will digest what I have to say and then

12 advise their clients accordingly.

13 Q Mr. Youngmun asked you about a number of steps in an

14 employer attempting to ascertain exempt and nonexempt

15 status of a job, and queried you as to whether or not the

16 particular steps were prudent or imprudent, such as

17 calling the Department of Labor, et cetera. In that line

18 of questioning would you consider it prudent for an

19 employer who is considering classifying a position exempt

20 or nonexempt to get a written opinion from the Department

21 of Labor as to the official State position?

22 A Yes.

23 Q Conversely, would you consider it imprudent not to get

24 that written formal opinion?

25 MR. YOUNGMUN: Object, the question's been asked and

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1 answered.

2 Q Okay, you can answer the question.

3 A Yes, I do, I think an employer is at risk if they act upon

4 the verbal advice without -- without giving the Department

5 an opportunity to see all the facts and to provide

6 something in writing that they can later on produce as

7 their guidance from the official source, i.e. the

8 Department.

9 Q All right, so just to be clear, not to be redundant, the

10 answer to the question is yes, that would be imprudent for

11 an employer not to get a formal DOL opinion?

12 A I think it would be risky behavior.

13 Q Okay. In response to some questions about oral opinions

14 you indicated that you used and I believe you said your

15 specialists use the phrase -- if somebody gave you an

16 opinion, you said, well, it sounds like it might be, and

17 then exempt or nonexempt. Is my understanding of your

18 testimony correct that you use that as a matter of routine

19 in your conversations when you make an oral opinion?

20 A That and other statements to -- to clarify that my oral

21 opinion is only good as the facts I'm given, and I don't

22 know what the facts are because you've -- they're being

23 represented, and they might -- I might be misinterpreting

24 them, I don't have something on black and white that we

25 can nail down and examine at a future date.

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1 Q Assuming Mr. Nelson asked you a question about the

2 exemption of a safety specialist back in 1997 or so, based

3 on your practice would you say that you made that

4 statement or a statement of that nature to him at the

5 time?

6 A I would certainly hope so, it is my practice.

7 Q When you're talking about oral opinions versus written

8 opinions I believe you gave testimony to the effect that

9 if you gave an oral opinion and then a case came down, was

10 the phrase you used, we would pursue it. I take that --

11 well, let me -- was that your prior testimony?

12 A I think effectively, yes.

13 Q Okay, so -- and was that in reference, then, to an oral

14 opinion versus a written one?

15 A Yes.

16 Q Okay. If you pursued that case would you also pursue that

17 case for liquidated damages?

18 A Possibly.

19 Q Okay. And what might cause you to either pursue it or not

20 pursue it?

21 A Well, liquidated damages are a matter of a court judgment,

22 and the vast majority of our cases are resolved

23 administratively short of court. So in most cases we're

24 able to reach a resolution without seeking damages, but

25 that's -- that's always there. And in fact when the law

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1 was amended it made it very clear that if the State

2 Department of Labor has to pursue a matter those damages

3 are mandatory, there is no good faith.

4 Q Okay, so in the instance we previously discussed, if it

5 went to court then the Department would pursue liquidated

6 damages?

7 A If it went to court then we would, yes.

8 Q And conversely, say in the instance of this materials

9 supervisor's position we talked about that's detailed in

10 our Exhibit 6, if you had that without 122 there and if six

11 months after you issued this letter in June of '97 and

12 there hadn't been a contrary court opinion, say, in the

13 interim, if a materials supervisor came to you and said, I

14 worked for APC, I'm being worked overtime and not paid, I

15 want to pursue it, would it be the Department's position,

16 no, we won't do that, here's the opinion letter, we've

17 decided you're exempt?

18 MR. YOUNGMUN: Object, leading.

19 A Based on the facts presented in the letter, you're exempt.

20 If the facts you have are something different than that,

21 then you need to prove it to us.

22 Q When you do these wage and hour seminars, I take it, for a

23 private provider do you do that as a DOL employee going

24 down and providing a service to the public or is that

25 something you do like as a side job?

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1 A Both.

2 MR. COVELL: Okay, that's all I have.

3 BY MR. YOUNGMUN:

4 Q Just a few questions. You've probably heard that before.

5 Mr. Carr, I think you indicated that if an employer

6 received an oral opinion from you or somebody in your

7 office, they would be at risk, or that -- or, you would

8 consider that to be risky behavior, is that your....

9 A If they acted upon an oral opinion.

10 Q Now, isn't it also true that an employer that received a

11 formal written opinion may also be at risk if a court

12 deter -- if a court ultimately determined that the

13 employer was wrong?

14 A Yes.

15 Q And in fact when you render either oral opinions or

16 written opinions you're basing on those opinions on the

17 facts that are given to you by the employer, true?

18 A Correct.

19 MR. YOUNGMUN: No further questions.

20 BY MR. COVELL:

21 Q Is it correct, Mr. Carr, that when an employer relies on

22 opinion written from you there's a risk that the court

23 might disagree with you and therefore they may be subject

24 to paying money for overtime, right?

25 A Correct.

1 Q In regard to an oral opinion is it also correct that
2 besides being at risk for that particular problem they're
3 also at risk for being held liable for liquidated damages?
4 A I think the risk is greater, yes.
5 Q Okay, and is that based on your prior -- is it correct for
6 me to understand, based upon your prior answers, the risk
7 there that there could be miscommunication and/or
8 misrepresentation, innocent or not, as to what the job
9 actually is?
10 A Yes.
11 MR. COVELL: Okay, that's all I have.
12 MR. YOUNGMUN: Okay.
13 (OFF THE RECORD)
14 END OF PROCEEDINGS
15 * * * * *

C E R T I F I C A T E

1 UNITED STATES OF AMERICA)
 2) ss.
 3 DISTRICT OF ALASKA)
 4 SUPERIOR COURT) ss.
 5 STATE OF ALASKA)

6 I, Teresa E. Mielke, Notary Public in and for the State of
 7 Alaska, residing at Anchorage, Alaska, and Electronic Reporter
 8 for Gemini Reporting Services, do hereby certify:

9 THAT the annexed and foregoing deposition of James Rand
 10 Carr was taken before me on the 8th day of September, 2003,
 11 beginning at the hour of 11:00 a.m., at the offices of Gemini
 12 Reporting Services, 943 West Sixth Avenue, Suite 110, Anchorage,
 13 Alaska, pursuant to Notice to take the deposition of said
 14 witness on behalf of the Plaintiff;

15 THAT the above-named witness, before examination, was duly
 16 sworn to testify to the truth, the whole truth, and nothing but
 17 the truth;

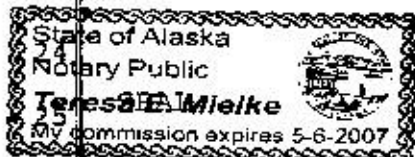
18 THAT this deposition, pages 3 through 59, is a full, true
 19 and accurate transcription of the testimony of said witness,
 20 reported by me electronically and thereafter transcribed by me.

21 THAT as required by Civil Rule 30(f)(1) amended, the
 22 original of the deposition transcript will be lodged in a sealed
 23 envelope with the law firm requesting transcription of same,
 that being the Law Office of Kenneth Covell;

And THAT I have been certified by the Alaska Supreme Court
 prior to January 1, 1993.

I am not a relative nor employee nor attorney nor counsel
 of any of the parties, nor am I financially interested in this
 action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed
 my seal this 14th day of September, 2003.



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